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February 18, 2004

By Hand Delivery and Facsimile

Mary W. Dove
Commission Secretary
Federal Election Commission
Room 905
999 E Street, NW
Washington, D.C. 20463

Re: Agenda Document No. 04-11-D

Dear Ms. Dove:

We are writing in response to Agenda Document No. 04-11-D, a revised version of proposed Advisory Opinion 2003-37 prepared by Vice Chair Weintraub, which was made available to the public late yesterday. We have previously worked with a large number of nonprofit organizations in preparing comments strongly criticizing the General Counsel's draft of this advisory opinion. Because time does not permit us to consult with our clients with respect to the Vice Chair's draft, we are submitting these comments in our own name.

Although the Vice Chair's draft states that the opinion "does not set forth general standards that might be applicable to other tax-exempt entities," it does not provide any legal support for this assertion. Moreover, because it continues to rely on the definition of "expenditures" in 2 U.S.C. § 431(9), the revised draft suffers from the same erroneous and overbroad analysis as the earlier draft. In short, we believe the revised draft does not cure the problems set forth in so many of the comments submitted in response to the initial draft.

The alternative draft opinion submitted by the Chair as Agenda Document No. 04-11-C is far more consistent with existing law and should be adopted by the full Commission. If that opinion cannot

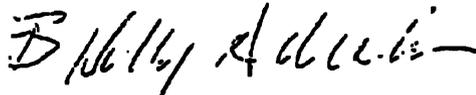
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garner four affirmative votes, we urge the Commission to reject both the initial draft opinion proposed by the General Counsel and the revised opinion prepared by the Vice Chair. In our view, no opinion would be far better than an overbroad opinion that will seriously impede advocacy efforts by nonprofit organizations and non-federal political organizations. As so many of the hundreds of public comments make clear, the Commission would be far better served if it deals with these difficult issues in a full rule-making, than through a hurried attempt to issue an advisory opinion.

Sincerely,



Michael B. Trister



B. Holly Schadler

cc: Chair Bradley A. Smith
Vice Chair Ellen L. Weintraub
Commissioner David M. Mason
Commissioner Danny L. McDonald
Commissioner Scott E. Thomas
Commissioner Michael E. Toner